

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TAMMY J. KITZMILLER, et al.	§	
	§	
Plaintiffs,	§	Civil Action No. 4:04-CV-2688
	§	(M.D. Pa.)
vs.	§	
	§	Hon. John E. Jones III
DOVER AREA SCHOOL	§	
DISTRICT and DOVER AREA	§	
SCHOOL DISTRICT BOARD	§	
OF DIRECTORS,	§	Motion for Leave of
	§	Foundation for Thought and
	§	Ethics to File Amicus Brief
Defendants.	§	

MOTION FOR LEAVE OF FOUNDATION FOR
THOUGHT AND ETHICS TO FILE AMICUS BRIEF

TO THE HONORABLE COURT:

The Foundation for Thought and Ethics (“FTE”) files this motion for leave to file an amicus brief, and would respectfully show the Court the following:

1. FTE is a non-profit corporation responsible for a seminal work on intelligent design, *The Mystery of Life’s Origin* (1984). FTE publishes and owns the intellectual property rights to *Of Pandas and People* (“*Pandas*”), the textbook which has been a focus of this litigation.¹

¹ As the Court is aware, FTE sought to intervene into this case on May 23, 2005. See Application to Intervene by Foundation for Thought and Ethics (filed on May 23, 2005), which is incorporated herein as if fully set forth.

2. A copy of the Brief of Amicus Curiae Foundation for Thought and Ethics is attached hereto as Exhibit A.

3. As provided for by Supreme Court rule 37(1), this Amicus Brief “[i] brings to the attention of the Court relevant matter [ii] not already brought to its attention by the parties . . .”

4. Throughout this litigation, Plaintiffs have gone to great efforts to mischaracterize *Pandas* and its publisher, FTE, as “creationist” or “religious.” In particular, Plaintiffs have attacked the school district’s policy which mentions *Pandas* by misdirecting the Court from the actual language of *Pandas*. Instead, Plaintiffs seek to rewrite the history of intelligent design, FTE and *Pandas*. Because of the importance of this issue not only to the Court, but to the legal status of FTE’s publication, this Amicus Brief seeks to provide the Court with relevant and accurate analysis concerning the history of intelligent design, FTE and *Pandas*.

5. Early on November 3, 2005, the undersigned attorney for The Foundation for Thought and Ethics attempted to contact and left messages with counsel for the parties seeking concurrence in the filing of this motion. No response was received back.

WHEREFORE, The Foundation for Thought and Ethics respectfully requests that the Court grant it permission to file its Amicus Brief.

Respectfully submitted,

Randall L. Wenger, Esq.
Pa. ID No. 86537
Leonard G. Brown, III, Esq.
Pa. ID No. 83206
CLYMER & MUSSER, P.C.
23 North Lime Street
Lancaster, PA 17602
(717) 299-7101

Jeffrey C. Mateer
Texas State Bar No. 13185320
MATEER & SHAFFER, L.L.P.
1300 Republic Center
325 N. St. Paul Street
Dallas, Texas 75201
(214) 720-9900

**ATTORNEYS FOR THE
FOUNDATION FOR
THOUGHT AND ETHICS**

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2005, a copy of the foregoing motion were served on the following counsel through the electronic case filing system:

Eric Rothschild
Stephen G. Harvey
Joseph M. Farber
Benjamin M. Mather
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103

Thomas B. Schmidt, III
Pepper Hamilton LLP
200 One Keystone Plaza
North Front and Market Streets
P. O. Box 1181
Harrisburg, PA 17108

Witold J. Walczak
ACLU of Pennsylvania
313 Atwood Street
Pittsburg, PA 15213

Paula K. Knudsen
ACLU of Pennsylvania
105 N. Front Street
Suite 225
Harrisburg, PA 17101

Richard B. Katskee
Ayesha Khan
Alex J. Luchenitser
Americans United for Separation Of Church and State

518 C. Street, NE
Washington, DC 20002

Mary Catherine Roper
ACLU of Pennsylvania
P. O. Box 1161
Philadelphia, PA 19105

Richard Thompson
Robert J. Muise
Patrick T. Gillen
THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Drive
P. O. Box 393
Ann Arbor, MI 49106

Ron Turo
Turo Law Offices
28 South Pitt Street
Carlisle, PA 17013

/s/ Randall L. Wenger
Randall L. Wenger, Esq.